A

# Charles Edward Victor v Malayan Banking Bhd

B

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S3(S7)-22–883 OF 2000
MOHD HISHAMUDIN J
22 JANUARY 2008

C

*Banking — Cheque — Dishonoured cheque — Post dated cheque — Presented prematurely — Bank marked 'refer to drawer' instead of 'post dated cheque' — Wrongful deduction of penalty — Causing another cheque to be dishonoured — Whether bank in breach of contract*

D

*Banking — Cheque — Dishonoured cheque — Wrongful deduction of penalty — Causing another cheque to be dishonoured — Closed customer's current account — Blacklisted in records of Bank Negara Malaysia — Whether bank in breach of contract*

E

*Tort — Defamation — Dishonour of cheques — Bank and customer — Cheque wrongly marked 'refer to drawer' instead of 'post-dated cheque' — Cheque wrongly dishonoured — Whether bank liable for defamation*

F

*Tort — Defamation — Dishonour of cheques — Bank and customer — Current account wrongly closed down by bank — Plaintiff is a trader — Name blacklisted in records of Bank Negara Malaysia — Barred from operating a current account with any bank in Malaysia — Whether bank liable for defamation*

G

The plaintiff operated a current account with the defendant bank. A post dated cheque issued by the plaintiff to a third party ('Cheong Trading') was prematurely presented by the third party to the defendant for payment. The cheque was returned by the defendant with the remark 'Refer to drawer'. The defendant also proceeded to debit the plaintiff's account with the sum of RM100 instead of the correct penalty for post dated cheque which is only RM10. The wrongful debiting of RM100 by the defendant had subsequently caused another cheque issued by the plaintiff to AIA Co Ltd to be dishonoured and marked 'Refer to Drawer'. Following this, the plaintiff was told to close his bank account and the plaintiff was blacklisted in the records with the Bank Negara Malaysia and was barred from operating a current account with any bank in Malaysia. The plaintiff sued the defendant for breach of contract and defamation.

H

I

**Held**, allowing the plaintiff's claim:

(1) On the facts, it was clear that the defendant had breached its contract with the plaintiff when it failed to honour the two cheques of the plaintiff and when it closed the plaintiff's account. However, damages of RM300,000 as prayed for was not awarded because the plaintiff had failed to prove actual loss of RM300,000 by reason of the breach of contract (see para 12).

(2) The defendant in rejecting the first cheque, should have stamped at the back of the cheque the words 'post dated cheque' instead of 'refer to drawer'. As for the second cheque, this cheque should not have been rejected by the defendant at all. The wrongful and unjustified 'Refer to Drawer' remark on both his cheques must have caused embarrassment to the plaintiff and had lowered his standing in the eyes of Cheong Trading and AIA Co Ltd (see paras 13–14).

(3) The plaintiff had not just suffered embarrassment when dealing with Cheong Trading and AIA Co Ltd alone, the acts of the defendant had also resulted in the closing of his account with the defendant bank and also with Public Account, and the blacklisting by Bank Negara Malaysia. Practically everyone in modern day society needs to have a bank account — all the more so if the person is a trader — like the plaintiff. He had suffered public humiliation due to the defendant's blunders (see para 16).

**[Bahasa Malaysia summary**

Plaintif mengendalikan satu akaun semasa dengan bank defendan. Sekeping cek yang bertarikh tertunda telah dikeluarkan oleh plaintif kepada pihak ketiga ('Cheong Trading') telah diberi secara pramatang oleh pihak ketiga tersebut kepada defendan untuk pembayaran. Cek itu telah dikembalikan oleh defendan dengan komen 'Rujuk kepada pengeluar'. Defendan turut meneruskan untuk mendebit akaun plantif dengan jumlah RM100 dan bukannya penalti yang sebetulnya untuk cek tarikh tertunda yang hanya RM10. Kesilapan mendebit sebanyak RM100 oleh defendan telah kemudiannya menyebabkan cek lain yang dikeluarkan oleh plaintif kepada AIA Co Ltd menjadi tak laku dan di tanda 'Rujuk kepada pengeluar'. Berikutan ini, plaintif telah diberitahu untuk menutup akaun dengan bank defendan dan plaintif telah disenarai hitam dalam rekod Bank Negara Malaysia dan telah dihalang dari mengendalikan akaun semasa dengan mana-mana bank di Malaysia. Plaintif menyaman defendan untuk kemungkiran kontrak dan fitnah.

**Diputuskan**, membenarkan tuntutan plaintif:

(1) Atas fakta, adalah jelas defendan telah memungkiri kontraknya dengan plaintif apabila ia gagal untuk melunaskan dua cek plaintif dan apabila ia mengeluarkan notis untuk menutup akaun plaintif. Namun begitu, ganti rugi sebanyak RM300,000 seperti yang diharapkan tidak diaward kerana plaintif gagal membuktikan kerugian sebenar sebanyak RM300,000 disebabkan oleh kemungkiran kontrak tersebut (lihat perenggan 12)

(2) Defendan, di dalam menolak cek pertama tersebut, sepatutnya mencetak di belakang cek tersebut dengan perkataan-perkataan 'cek tarikh tertunda' dan bukannya 'rujuk kepada pengeluar'. Berkenaan cek kedua, cek ini tidak sepatutnya ditolak oleh defendan sama sekali. Komen 'rujuk kepada pengeluar' yang salah dan tidak patut pada kedua-dua ceknya pasti telah menyebabkan aib kepada plaintif dan merendahkan kedudukannya dalam pandangan Cheong Trading dan AIA Co Ltd (lihat perenggan 13–14).

(3) Plaintif bukan sahaja mengalami keaiban apabila berurusan dengan Cheong Trading dan AIA Co Ltd, perbuatan defendan juga telah menyebabkan penutupan akaun plaintif dengan bank defendan dan juga dengan Akaun Public, dan penyenaraianhitam oleh Bank Negara Malaysia. Secara praktikalnya semua orang dalam masyarakat moden perlu mempunyai akaun bank — lebih-lebih lagi jika dia seorang peniaga — seperti plaintif. Beliau telah menanggung malu kerana kesilapan defendan (lihat perenggan 16).]

**Notes**

For cases on dishonour of cheques under tort, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 324–326.

For cases on dishonoured cheques under banking, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2030–2040.

**Legislation referred to**

Rules of the High Court 1980 O 78 r 2, O 78 r 3(1)

*Suria Kumar (Suria Kumar & Co) for the plaintiff.*
*Ravindra Kumar (Gulam & Wong) for the defendant.*

**Mohd Hishamudin J:**

**[1]** In this action the plaintiff is suing the defendant for breach of contract and for defamation.

**[2]** The plaintiff is a trader. He carries on his business under the name and style of 'Cevic Enterprise'. He was a customer of the defendant bank and operated a current account No 014075-109459 with the defendant bank. He had been a customer of the bank since 1982.

**[3]** On 5 June 2000 the plaintiff issued a cheque which was post dated to 7 July 2000 for RM180 in favour of one Cheong Trading. This cheque was prematurely presented by Cheong Trading to the defendant for payment on 7 June 2000. This cheque was returned by the defendant with the remark:

Refer to drawer

incorrectly stamped on the cheque. The defendant should have instead stamped the words:

post dated cheque

**[4]** The defendant then proceeded to wrongly debit the plaintiff's account with the sum of RM100 instead of the correct penalty amount for post-dated cheques which is only RM10.

**[5]** It was unfortunate for the plaintiff: one mistake (by the bank) led to another. Due to the wrongful debiting of RM100 by the defendant, the plaintiff's account was wrongly recorded as being overdrawn by RM82.78.

**[6]** The plaintiff at the material time was also an insurance agent of an insurance company — AIA Co Ltd. On 7 June 2006 the plaintiff issued a cheque No 641036 in favour of AIA Co Ltd for RM227.90. On 12 June 2000 the plaintiff deposited cash in the sum of RM250 to ensure that there would be sufficient fund to honour this cheque No 641036.

**[7]** However, the cash of RM250 deposited by the plaintiff to honour payment of his cheque No 641036 to AIA Co Ltd was unfortunately utilised by the defendant bank to set off the 'overdrawn' balance and the plaintiff's account was left with only RM167.22. The balance of RM167.22 in the plaintiff's account was insufficient to honour the plaintiff's cheque No 64136 for RM227.90 in favour of AIA Co Ltd.

**[8]** On 13 June 2000 the plaintiff's cheque No 641036 was also returned by the defendant with the words 'Refer to Drawer' and the plaintiff's account was again debited with RM100. Following this, the defendant bank proceeded to issue a notice dated 17 June 2000 to the plaintiff to close his account pursuant to the *Biro Maklumat Cek* guidelines.

**[9]** As a result of the plaintiff's cheques Nos 641037 and 641036 being dishonoured wrongly by the defendant bank, the plaintiff was blacklisted in the records with Bank Negara Malaysia and was barred from operating a current account with any bank in Malaysia. The plaintiff's current account with another bank, that is, Public Bank Berhad was also closed due to this blacklisting.

**[10]** The defendant's have admitted their mistakes through their solicitors' letter dated 15 September 2000.

**[11]** At the conclusion of the trial, and after considering written submissions of both sides, I was satisfied that the defendant:

(a) had committed a breach of contract; and

(b) had defamed the plaintiff.

BREACH OF CONTRACT

**[12]** In my judgment, on the law it is clear that Malayan Banking had breached its contract with the plaintiff when it failed to honour the two cheques of the plaintiff and when it closed the plaintiff's account. However, I did not award plaintiff the damages of RM300,000 as prayed for because on the evidence I am not satisfied that the plaintiff had succeeded in proving actual loss of RM300,000 by reason of the breach of contract.

DEFAMATION

**[13]** In my judgment, it is defamatory for the bank to stamp the words:

Refer to Drawer

in rejecting the two cheques of the plaintiff. With regard to the first cheque, in rejecting this cheque, the words that should have been stamped at the back of the cheque should have been 'posted dated' instead of 'refer to drawer'. With regard to the second cheque, this cheque should not have been rejected by the defendant at all. The plaintiff *actually* had sufficient funds in his account. It is true that his account showed that he had insufficient funds — but that was not what the situation should have been: there was insufficient fund simply because of the bank's blunders. The bank had made blunders in dealing with the plaintiff's account. The first blunder was in debiting RM100 from the plaintiff's account. The second blunder was to deduct RM82.78 from the RM250 cash deposited by the plaintiff into his account.

**[14]** The wrongful and unjustified 'Refer to Drawer' remark on both his cheques must have caused embarrassment to the plaintiff and had lowered his standing in the eyes of Cheong Trading and AIA Co Ltd.

**[15]** In *Paget's Law of Banking* (11th Ed) at pp 337–338 the learned author says:

> Libel is a tort, the making of a defamatory statement in writing or printing which without justification disparages a man's reputation to a third party. When a cheque is dishonoured it is usual for the drawee bank to put a note on it indicating the reason for the dishonour.
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> In *Sim v Stretch* [1936] 2 All ER 1237 (HL), Lord Atkin said that if the words used to lower the plaintiff in the estimation of right thinking people generally, they are defamatory. What are right thinking people may not readily be defined, but it may be said that the common answer where a bank decides to dishonour a cheque conveys in many people's mind that he has no money in his account to meet it, or that he did not draw in good faith or that he drew recklessly or in fraud.
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> ...
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> The answer commonly given, in the absence of circumstances requiring a different one, is 'Refer to Drawer', sometimes abbreviated to 'R/D'. At one time this was not regarded as capable of a defamatory meaning, as witness the statement of Scrutton J in *Flach v London and South-Western Bank Ltd* (1915) 31 TLR 334 that it was not possible to extract a libelous meaning from what the bank said. This view was adopted by Du Parc J in *Plunkett v Barclays Bank Ltd* [1936] 2 KB 107. Today, it is generally accepted that the term is capable of a defamatory meaning.

**[16]** In the present case, I awarded the plaintiff RM250,000 as damages for defamation. I am of the view this award is justified in the circumstances. It is not just the embarrassment suffered when dealing with Cheong Trading and AIA Co Ltd alone. The acts of the defendant resulted in the closing of his account with the defendant bank and also with Public Account, and the blacklisting by Bank Negara Malaysia. Practically everyone in modern day society needs to have a bank account — all the more so if the person is a trader — like the plaintiff. He had suffered public humiliation due to the defendant's blunders.

**[17]** Learned counsel for the defendant submits that the plaintiff did not plead the commission of the tort of libel by the plaintiff in the plaintiff's statement of claim. The defendant further points out that O 78 rr 2 and 3(1) of the Rules of the High Court 1980 has not been complied with in the drafting of the statement of claim. I have closely examined the statement of

claim. Clearly there is no merit in this technical argument raised by the defence. This argument should not have been raised at all.

*Plaintiff's claim allowed.*

Reported by Brendan Navin Siva